

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

ADALINE WINNINGHAM,

Plaintiff,

No. 6:22-cv-00382-MK

v.

ORDER

**RAFEAL'S GOURMET DINER,
LLC, et al.**

Defendants.

AIKEN, District Judge.

This case comes before the Court on a Findings and Recommendation filed by Magistrate Judge Mustafa Kasubhai. ECF No. 62. Judge Kasubhai recommends that Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 41(b), ECF No. 57, should be granted and this case should be dismissed without prejudice.

Under the Federal Magistrates Act, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge's findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review.

See Thomas v. Arn, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”). Although no review is required in the absence of objections, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Id.* at 154. The Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court should review the recommendation for “clear error on the face of the record.”

In this case, no party has filed objections to the F&R. The Court notes that Plaintiff Hannah Thornton has accepted an offer of judgment and judgment has been entered in her favor. ECF Nos. 45, 53. This case therefore involves only the remaining plaintiff, Adaline Winningham. The Court finds no error and the F&R, ECF No. 62, is ADOPTED. Defendants’ Motion to Dismiss, ECF No. 57, is GRANTED and this case is dismissed without prejudice. Final judgment shall be entered accordingly.

It is so ORDERED and DATED this 31st day of May 2023.

/s/Ann Aiken
ANN AIKEN
United States District Judge